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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

03-2-325

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on July 27, 2005Signature W. H. McNeillTyped or printed name W. H. McNeill

Application Number

10/759,637

Filed

01/11/2004

First Named Inventor

Michael J. Swantner

Art Unit

2833

Examiner

Chung Trans

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 24,426☐ attorney or agent acting under 37 CFR 1.34.
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Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

This request accompanies the Notice of Appeal filed concurrently in the subject application.

Claims 1-5 are pending in the application with only Claim 1 being independent.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sheesley et al. (USPN) 4,666,231 and Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Sheesley in view of Tanaka (USPN) 4,556,264.

"Factual determination of anticipation requires disclosure in single reference of every element of claimed invention, and examiner must identify wherein each and every facet of claimed invention is disclosed in applied reference." **Ex parte Levy**; 17 USPQ2d; PTO Bd of Pat. App. and Int.; October 16, 1990

All of the instant claims require an electrically conductive member with an electrically conductive pin positioned therein and "...a single-piece electrically insulating body ***surrounding*** said electrically conductive member and said electrically conductive pin..." (Emphasis added).

The term "surrounding" as used in the specification and claims and as shown in the drawings (see Fig. 3 of the subject application) is obviously to be interpreted as meaning that the electrical components are covered by an insulating material except where necessary for electrical connection to be made thereto.

A review of the Sheesley reference, particularly Figs. 1 and 2 thereof, clearly shows that the electrical contacts (members or pins) are not "surrounded" by an insulating body as required by the claims. Actually, entire sections of the Sheesley contacts 20, 6, and 17 have exposure to the environment, as seen in Fig. 2 of Sheesley. Therefore, a claimed element is lacking in the Sheesley reference that constitutes a clear legal and factual deficiency in the rejection.

Likewise, the rejection of Claim 3 under 35 U.S.C. §103(a) as unpatentable over the combination of Sheesley with Tanaka is based both on a clear legal and factual deficiency.

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First, since a claimed element is lacking in the primary reference, the combination of the primary reference (Sheesley) with the secondary reference (Tanaka) must also fail as combination for that reason alone.

Second, the limitation that is added to the claimed combination by dependent Claim 3 is "...at least two spacing feet and at least one compressible leg." The Examiner admits at paragraph 5 of the Final Rejection that Sheesley does not teach a "compressible leg", but then goes on to say that it would have been obvious to a skilled artisan to provide a compressible leg if one was needed.

To support this position the Examiner cites Tanaka; however, the Office Action does not indicate where in Tanaka a "compressible leg" is taught or even mentioned. Tanaka's connector is for telephones and the only "legs" shown (designated "engaging pieces" at col. 4, lines 18 and 19 and enumerated 16a, are not "compressible", they are resilient and deflectable so that the engaging claws 15a formed on the end thereof can engage the recesses 13a, 13b of the second part of the connector. This is a far cry from the instant teaching of compressible legs.

Further, even assuming, arguendo, that Tanaka teaches compressible legs, the only suggestion for the combination of spacing feet (applicants' item 34) and at least one compressible leg (applicants' item 36) comes from the instant disclosure, and this teaching is not available to the Examiner.

"In determining obviousness of claimed apparatus under 35 U.S.C. 103, it is improper to modify reference in light of applicant's own disclosure." **Ex parte Camarata**; 151 USPQ 739; PO Bd of App; Mar. 1 and May 17, 1966

It is respectfully submitted that there is no suggestion in the combination of references proposed by the examiner for the combination of "spacing feet" and "compressible leg" of Claim 3 absent the instant specification. The cited art does not even recognize a need for such a combination.

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"Fact that disclosures of references can be combined does not make combination obvious unless the art also contains something to suggest desirability of combination." In re Imperato; 179 USPQ 730; CCPA; Nov. 15, 1973.

Accordingly, it is submitted that clear legal and/or factual deficiencies exist in the rejection of the claims in this application and the allowance of the claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. H. McNeill', written in a cursive style.

William H. McNeill
Reg. No. 24,426
Agent of Record